

31A-41-101. Title.

This chapter is known as the "Title Insurance Recovery, Education, and Research Fund Act."

Enacted by Chapter 220, 2008 General Session

31A-41-102. Definitions.

As used in this chapter:

(1) "Commission" means the Title and Escrow Commission created in Section 31A-2-403.

(2) "Fund" means the Title Insurance Recovery, Education, and Research Fund created in Section 31A-41-201.

(3) "Title insurance licensee" means:

- (a) an agency title insurance producer; or
- (b) an individual title insurance producer.

Amended by Chapter 319, 2013 General Session

31A-41-103. Authority to take disciplinary action not limited.

(1) This chapter does not limit the authority of the commissioner or the commission to take disciplinary action against a title insurance licensee for a violation of this title or rules made by the department or commission under this title.

(2) The repayment in full of obligations to the fund by a title insurance licensee does not nullify or modify the effect of another disciplinary proceeding brought pursuant to this title or rules and regulations made by the department or commission under this title.

Enacted by Chapter 220, 2008 General Session

31A-41-201. Creation of Title Insurance Recovery, Education, and Research Fund.

(1) There is created an expendable special revenue fund to be known as the "Title Insurance Recovery, Education, and Research Fund."

(2) The fund shall consist of:

- (a) assessments on individual title insurance producers and agency title insurance producers made under this chapter;
 - (b) amounts collected under Section 31A-41-305; and
 - (c) interest earned on the fund.
- (3) Interest on fund money shall be deposited into the fund.
- (4) The department shall administer the fund.

Amended by Chapter 319, 2013 General Session

Amended by Chapter 400, 2013 General Session

31A-41-202. Assessments.

(1) Beginning January 1, 2009, an agency title insurance producer licensed

under this title shall pay an annual assessment determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the annual assessment:

(a) may not exceed \$1,000; and

(b) shall be determined on the basis of title insurance premium volume.

(2) Beginning January 1, 2009, an individual who applies for a license or renewal of a license as an individual title insurance producer, shall pay in addition to any other fee required by this title, an assessment not to exceed \$20, as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that if the individual holds more than one license, the total of all assessments under this Subsection (2) may not exceed \$20 in a fiscal year.

(3) (a) To be licensed as an agency title insurance producer on or after July 1, 2008, a person shall pay to the department an assessment of \$1,000 before the day on which the person is licensed as a title insurance agency.

(b) (i) By no later than July 15, 2008, the department shall assess on an agency title insurance producer licensed as of June 30, 2008, an amount equal to the greater of:

(A) \$1,000; or

(B) subject to Subsection (3)(b)(ii), 2% of the balance as of December 31, 2007, in the agency title insurance producer's reserve account described in Subsection 31A-23a-204(3).

(ii) The department may assess on an agency title insurance producer an amount less than 2% of the balance described in Subsection (3)(b)(i)(B) if:

(A) before issuing the assessments under this Subsection (3)(b) the department determines that the total of all assessments under Subsection (3)(b)(i) will exceed \$250,000;

(B) the amount assessed on the agency title insurance producer is not less than \$1,000; and

(C) the department reduces the assessment in a proportionate amount for agency title insurance producers assessed on the basis of the 2% of the balance described in Subsection (3)(b)(i)(B).

(iii) An agency title insurance producer assessed under this Subsection (3)(b) shall pay the assessment by no later than August 1, 2008.

(4) The department may not assess a title insurance licensee an assessment for purposes of the fund if that assessment is not expressly provided for in this section.

Amended by Chapter 319, 2013 General Session

31A-41-203. Use of money.

(1) Money in the fund may be used to pay claims made under Part 3, Claims on Fund.

(2) (a) Except as limited by Subsection (2)(b), money in the fund in excess of \$250,000 may be used by the commissioner, with the consent of the commission, to:

(i) investigate violations of this chapter related to fraud by a title insurance licensee;

- (ii) conduct education and research in the field of title insurance; or
- (iii) examine a title insurance licensee's:
 - (A) escrow and trust account;
 - (B) search and examine procedures; or
 - (C) compliance with applicable statutes and rules.

(b) The commissioner may not use more than 75% of money collected under this chapter in a fiscal year from assessments and interest for the purposes outlined in this Subsection (2).

(3) The disclosure of an examination conducted under this section is governed by Section 31A-2-204.

Enacted by Chapter 220, 2008 General Session

31A-41-301. Procedure for making a claim against the fund.

(1) (a) To bring a claim against the fund a person shall notify the department within 30 business days of the day on which the person files an action against a title insurance licensee alleging the following related to a title insurance transaction:

- (i) fraud;
 - (ii) misrepresentation; or
 - (iii) deceit.
- (b) The notification required by Subsection (1)(a) shall be:
- (i) in writing; and
 - (ii) signed by the person who provides the notice.

(c) Within 30 days of the day on which the department receives a notice under Subsection (1)(a), the department may intervene in the action described in Subsection (1)(a).

(2) (a) Subject to the other provisions in this section, a person who provides the notice required under Subsection (1) may maintain a claim against the fund if:

- (i) in an action described in Subsection (1), the person obtains a final judgment in a court of competent jurisdiction in this state against a title insurance licensee;
- (ii) all proceedings including appeals related to the final judgment described in Subsection (2)(a)(i) are at an end; and

(iii) the person files a verified petition in the court where the judgment is entered for an order directing payment from the fund for the uncollected actual damages included in the judgment and unpaid.

- (b) A court may not direct the payment from the fund of:
- (i) punitive damages;
 - (ii) attorney fees;
 - (iii) interest; or
 - (iv) court costs.

(c) Regardless of the number of claimants or parcels of real estate involved in a single real estate transaction, the liability of the fund may not exceed:

- (i) \$15,000 for a single real estate transaction; or
 - (ii) \$50,000 for all transactions of a title insurance license.
- (d) A person shall:

- (i) serve the verified petition required by Subsection (2)(a) on the department;

and

(ii) file an affidavit of service with the court.

(3) (a) A court shall conduct a hearing on a petition filed with the court within 30 days after the day on which the department is served.

(b) The person who files the petition may recover from the fund only if the person shows all of the following:

(i) the person is not a spouse of the judgment debtor or the personal representative of the spouse;

(ii) the person complied with this chapter;

(iii) the person has obtained a final judgment in accordance with this section indicating the amount of the judgment awarded;

(iv) the amount still owing on the judgment at the date of the petition;

(v) the person has had a writ of execution issued under the judgment, and the officer executing the writ has returned showing that:

(A) no property subject to execution in satisfaction of the judgment could be found; or

(B) the amount realized upon the execution levied against the property of the judgment debtor is insufficient to satisfy the judgment;

(vi) the person has made reasonable searches and inquiries to ascertain whether the judgment debtor has any interest in property, real or personal, that may satisfy the judgment; and

(vii) the person has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor.

(4) If the person described in Subsection (3) satisfies the court that it is not practicable for the person to comply with one or more of the requirements in Subsections (3)(b)(v) through (vii), the court may waive those requirements.

(5) (a) A judgment that is the basis for a claim against the fund may not have been discharged in bankruptcy.

(b) If a bankruptcy proceeding is still open or is commenced during the pendency of the claim, the person bringing a claim against the fund shall obtain an order from the bankruptcy court declaring the judgement and debt to be nondischargeable.

Amended by Chapter 253, 2012 General Session

31A-41-302. Department's authority to act upon receipt of petition.

(1) Upon receipt of a petition required by Section 31A-41-301, the department may answer, initiate review proceedings of its own, or appear in any proceeding:

(a) in the name of the defendant to the action; or

(b) on behalf of the fund.

(2) Subject to court approval, the department may compromise a claim on the basis of an application of the person who files the petition.

Enacted by Chapter 220, 2008 General Session

31A-41-303. Court determination and order.

Subject to the requirements of this part, if the court determines that a claim should be levied against the fund, the court shall enter an order directing the department to pay from the fund that portion of the petitioner's judgment that is payable from the fund.

Enacted by Chapter 220, 2008 General Session

31A-41-304. Insufficient funds to satisfy judgment.

If the money in the fund is insufficient to satisfy a claim ordered to be paid under Section 31A-41-303, when sufficient money is in the fund, the department shall pay a person with an unpaid claim:

- (1) in the order that petitions related to unpaid claims are originally served on the department; and
- (2) an amount equal to the sum of:
 - (a) the unpaid claim; and
 - (b) interest on the unpaid claim at a rate of 5% per annum from the date the court orders payment from the fund until the day on which the claim is paid.

Amended by Chapter 342, 2011 General Session

31A-41-305. Department subrogated -- Authority to revoke license.

(1) (a) If the department makes payment from the fund, the department is subrogated to all the rights of the person who received money from the fund for the amounts paid out of the fund.

(b) Any amounts recovered by the department under the subrogated rights shall be deposited in the fund.

(2) (a) The license of a title insurance licensee for whom payment from the fund is made under this chapter is automatically revoked.

(b) Before a title insurance licensee whose license is revoked under this section may apply for a new license under this title, the title insurance licensee shall pay to the department for deposit in the fund:

(i) the amounts paid by the fund because of an action brought against the title insurance licensee; and

(ii) interest at a rate determined by the commissioner with the concurrence of the commission.

Enacted by Chapter 220, 2008 General Session

31A-41-306. Failure to comply constitutes a waiver.

The failure of a person to comply with this chapter constitutes a waiver of any right provided under this chapter.

Enacted by Chapter 220, 2008 General Session